

### **Remarks**

The Examiner requires election of a single species from the list of foam materials in each of claims 8 and 32; from the list of metals in each of claims 15 and 26; and from the list of metals in each of claims 18, 27 and 42 for prosecution on the merits and "to which the claims shall be restricted if no generic claim is finally held to be allowable."

Applicants traverse the requirement for the election of species because the requirement is improper. The MPEP provides explicit instructions for determining whether or not a species restriction is proper. In particular, the MPEP states the following: "to require restriction between claims limited to species, the claims must not overlap in scope" [see MPEP § 806.04(f)]. In other words, the claims must be directed to subject matter that is mutually exclusive.

The Examiner does not provide any reasons as to why the materials listed in claims 8 and 32 are mutually exclusive or patentably distinct. Applicants assert that the materials listed in each of claims 8 and 32 do not equate to subject matter that is mutually exclusive. As explained above, the standard for requiring an election of species is that each species must have an element excluded by each of the other species. The materials listed in claims 8 and 32 do not have an element that is excluded by each of the other species. In fact, the materials listed in claims 8 and 32 are all organic materials that may be used as the foam of claims 5 and 31, from which claims 8 and 32 respectively depend. Therefore, the alleged species within claims 8 and 32 do not correspond to mutually exclusive species, and thus it is improper to impose a requirement for election of species.

Regarding claim groups 15 and 26, and 18, 27 and 42, the Examiner states that the species listed within the respective claims are independent or distinct because they are metals with different catalytic ability. Applicants assert that the metal materials listed in claims 15 and 26, and claims 18, 27 and 42 do not equate to subject matter that is mutually exclusive. As explained above, the standard for requiring an election of species is that each species must have an element excluded by each of the other species. The materials listed in these claims do not have an element that is excluded by each of the other species; in fact, each of the listed materials is a metal. It is submitted that a

difference in catalytic activity of the different metals does not render the metals mutually exclusive. Therefore, the alleged species within claims 15 and 26, and claims 18, 27 and 42 do not correspond to mutually exclusive species, and thus it is improper to impose a requirement for election of species.

Applicants further submit that there is no serious burden on the Examiner in examining the foam materials (of each of claims 8 and 32) and/or the metal materials (of each of claims 15 and 26, and each of claims 18, 27 and 42) together.

As such, it is further submitted that it would be proper under MPEP § 806.04(e) and (f) to examine claims 8 and 32, 15 and 26, and 18, 27 and 42 without requiring an election of species.

However, in order to fully comply with the Election of Species requirement, if the Examiner maintains the requirement, Applicants provisionally elect with traverse modified polyurethane (claims 8 and 32), ruthenium (claims 15 and 26), and ruthenium (claims 18, 27 and 42). It is noted that claims 8 and 42 are in non-elected Groups I and III, respectively. It is submitted that claims 12-14, 16, 17, 19-25, 28-31, 33-38 and 45-47 are generic.

Further and favorable consideration is requested. If the Examiner believes it would expedite prosecution of the present application, the Examiner is cordially invited to contact Applicants' Attorney at the number listed below.

Respectfully submitted,

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